

## REMARKS

### Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner has indicated consideration of the Information Disclosure Statement filed February 13, 2009 by returning an initialed and signed copy of the Form PTO-1449 submitted therein.

Applicants further note with appreciation that the Examiner appears to have withdrawn all rejections which have been set forth in the previous Office Action.

Claims 46, 48, 54-64 and 72-75 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Brunig et al., U.S. Patent No. 6,942,871 (hereafter “BRUNIG”) in view of Yu et al., U.S. Patent No. 5,571,841 (hereafter “YU”).

Claims 47, 49-53, 65 and 67-71 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BRUNIG in view of YU and Diec et al., U.S. Patent No. 6,468,551 (hereafter “DIEC”).

Applicants note that although claim 66 is indicated to be rejected in the Office Action Summary, the Office Action itself does not appear to address claim 66.

### Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the following remarks.

All of the claims of record with the exception of claim 66 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BRUNIG in view of YU (and

DIEC). The rejections essentially allege that BRUNIG discloses all of the elements which are recited in the rejected claims with the exception of mandelic acid as the  $\alpha$ -hydroxycarboxylic acid and the amount of the  $\alpha$ -hydroxycarboxylic acid (which deficiencies are allegedly cured by YU) and an oil-in-water microemulsion which comprises an oil phase, a water phase and emulsifiers (which deficiency is allegedly cured by DIEC).

Applicants respectfully (and strongly) disagree with the Examiner in this regard. It is noted that the Examiner appears to take the position that because BRUNIG teaches that the microemulsion antiperspirant gel and stick preparations taught therein may contain antioxidants as optional components and  $\alpha$ -hydroxy acids such as citric acid, lactic acid and malic acid are mentioned therein as members of a group of more than 100 examples of suitable antioxidants, one of ordinary skill in the art would be motivated by YU to use mandelic acid instead of citric acid, lactic acid or malic acid as  $\alpha$ -hydroxy acid because all of these acids are mentioned in YU.

In this regard, it is pointed out that even if one were to assume, *arguendo*, that one of ordinary skill in the art would be motivated to incorporate an antioxidant and in particular, an  $\alpha$ -hydroxy acid into the preparations of BRUNIG (although none of the exemplified preparations of BRUNIG contains any antioxidant), there is no reason for one of ordinary skill in the art to consult YU in this regard, let alone to use mandelic acid as an antioxidant  $\alpha$ -hydroxy acid.

In particular, it is not even known if mandelic acid can act as an antioxidant. In this regard, it is noted that YU does not appear to teach or suggest that mandelic acid can act as an antioxidant. Further, the specific examples of  $\alpha$ -hydroxy acids which are

mentioned in BRUNIG as being suitable as antioxidants, i.e., citric acid, lactic acid or malic acid, all are aliphatic acids, whereas mandelic acid is an aromatic acid. For these reasons alone, there is no motivation for one of ordinary skill in the art to use mandelic acid as an antioxidant in the preparations of BRUNIG.

Further, while the title and the claims of YU expressly mention mandelic acid (for use in a method of treating wrinkles), the specification of YU does not emphasize mandelic acid at all, let alone conveys the impression that mandelic acid is a particularly desirable hydroxy acid. For example, mandelic acid is not mentioned in any of the 29 Examples of YU. Neither does the list of more than 30 “representative” hydroxy acids in col. 6, lines 24-40 of YU include mandelic acid (although it includes five derivatives of mandelic acid).

Even further, it is not seen that the property of mandelic acid which is highlighted in YU, i.e., its ability to visibly reduce human skin wrinkles (see, e.g., claim 1 of YU), provides any reason for one of ordinary skill in the art to add mandelic acid to the antiperspirant preparations of BRUNIG. In particular, antiperspirant preparations are applied to the underarm (see, e.g., col. 7, lines 40-45 of BRUNIG). Clearly, wrinkle reduction at the underarm is not associated with any apparent benefit. This is yet another reason why YU is unable to render it obvious to add mandelic acid to an antiperspirant preparation of BRUNIG.

Additionally, even if one were to assume, *arguendo*, that one of ordinary skill in the art would be motivated to add mandelic acid to the preparations of BRUNIG for any reason, it is not seen what would motivate him or her to optimize the ratio of

antiperspirant agent and mandelic acid (see dependent claims 56, 57 and 72), and neither does the present Office Action offer any explanation in this regard.

It additionally is pointed out that dependent claim 55 and independent claim 64 both recite, *inter alia*, that the one or more antiperspirant active ingredients of the claimed cosmetic formulation comprise aluminum chlorohydrate and/or activated aluminum chlorohydrate.

In comparison, the the highly viscous microemulsion antiperspirant preparations of BRUNIG must contain aluminum-zirconium salts. See, e.g., abstract, col. 1, lines 13-17, col. 2, lines 2-6, col. 7, lines 40-62 and claim 1 of BRUNIG. BRUNIG neither teaches nor suggests that the aluminum-zirconium salts taught therein can be replaced by “pure” aluminum salts. On the contrary, a comparison of the compositions of Example 1 and Comparative Example C1 in Table 1 of BRUNIG shows that replacing an aluminum-zirconium salt by the same amount of aluminum chlorohydrate dramatically reduces the viscosity of the resultant antiperspirant microemulsion, i.e., from 825,000 mPas to 6,000 mPas. Since the antiperspirant microemulsions of BRUNIG are to be highly viscous with a viscosity of at least about 100,000 mPas (see, e.g. abstract and claim 1 of BRUNIG) BRUNIG not only fails to render obvious a microemulsion which comprises (activated) aluminum chlorohydrate but even teaches away therefrom.

Applicants submit that for at least all of the foregoing reasons, BRUNIG in view of YU and DIEC is unable to render obvious the subject matter of any of the rejected claims. Accordingly, withdrawal of the present rejections under 35 U.S.C. § 103(a) is warranted and respectfully requested.

It further point out that in view of the clear facts set forth above, Applicants have refrained from commenting on each and every allegation which is set forth in the present Office Action. Applicants' silence in this regard should however, by no means be construed as admission that any of the remaining allegations which are not addressed above are meritorious.

### **CONCLUSION**

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,  
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